

1  
2  
3  
4  
5  
6  
7 NATIONAL FAIR HOUSING ALLIANCE  
8 INC, et al.,  
9 Plaintiffs,  
10 v.  
11 FEDERAL NATIONAL MORTGAGE  
12 ASSOCIATION (“FANNIE MAE”),  
13 Defendant.  
14

Case No. [16-cv-06969-JSW](#) (JSC)

**ORDER REGARDING MARKETING  
MATERIALS DISCOVERY DISPUTE**

Re: Dkt. No. 117

15 Now pending before the Court is a joint discovery dispute letter. (Dkt. No. 117.) Plaintiffs  
16 seek to compel Fannie Mae to search for and produce marketing-related materials beyond those  
17 Fannie Mae already agreed to produce. After carefully considering the parties’ letter and the  
18 pleadings, the Court concludes that oral argument is unnecessary, *see* N.D. Cal. Civ. L.R. 7-1(b),  
19 and rules as set forth below.

**DISCUSSION**

20 Plaintiffs insist that the materials sought “are plainly relevant to Plaintiffs’ claims that  
21 Fannie Mae harmed communities of color through its REO management, including its marketing  
22 of REO properties.” (Dkt. No. 117 at 2.) The materials sought would be relevant to such claims,  
23 but as the FAC is currently pled, and as the district court has interpreted the FAC, Fannie Mae is  
24 not making those broad marketing claims.

25 The FAC’s “Introduction and Summary of Claims” describes Plaintiffs’ claims as  
26 challenging Fannie Mae’s maintenance of the foreclosed homes. (Dkt. No. 39 ¶¶ 3, 6-16, 18-19,  
27 21-24, 26.) The “Introduction and Summary of Claims” cannot reasonably be read as describing  
28 Plaintiffs’ claims as challenging Fannie Mae’s marketing of the properties separate from the

1 maintenance issue. The district court also interprets the FAC as alleging that “Fannie Mae failed  
2 to perform basic maintenance on foreclosed properties it suddenly owned in minority  
3 neighborhoods around the country, even while it did perform routine maintenance on properties it  
4 came to own in predominantly white neighborhoods.” (Dkt. No. 70 at 2.) To the extent Plaintiffs  
5 disagree with the district court’s interpretation of the claims in this nearly five-year old case,  
6 Plaintiffs must raise that issue with the district court. For purposes of discovery, this Court  
7 interprets the claims as set forth in the FAC’s Summary of Claims and the district court’s orders.

8 With that interpretation in mind, the Court addresses Plaintiffs’ requests. After various  
9 meet and confer efforts, Plaintiffs reduced their demands to three areas, each of which, they  
10 contend, Fannie Mae rejected. The Court considers each in turn.

11 1. Plaintiffs seek “policies and procedures applicable to vendors responsible for  
12 Fannie Mae REO property maintenance, as well as Fannie Mae’s procedures for maintenance  
13 vendor management.” As evidence of this request they identify Ex. B at 7, D. Oakley letter. (Dkt.  
14 No. 117 at 3a.) That letter, however, states that “Fannie Mae *will produce* its policies and  
15 procedures applicable to vendors responsible for Fannie Mae REO property maintenance, as well  
16 as Fannie Mae’s procedures for maintenance vendor management.” (Dkt. No. 117-2 at 4  
17 (emphasis added).) Unless Fannie Mae has backtracked from what it promised, there is no dispute  
18 here. Fannie Mae shall produce all policies and procedures applicable to vendors responsible for  
19 maintenance, whatever those policies are. If they apply to the maintenance vendors, then they  
20 should be produced as agreed.

21 2. Plaintiffs also seek additional fields related to marketing from two REO databases,  
22 Equater and Trax. In particular, the “Initial Marketing Plan” information field, as well as fields  
23 identifying whether a property is being marketed “as is” or on “as repaired” basis and information  
24 on “as is” and “as-repaired” valuations. Plaintiffs do not explain how the “Initial Marketing Plan”  
25 field relates to their claims and what they expect it would reveal. However, whether property is  
26 being marketed “as is” or “as repaired” and the valuations for each could tend to support  
27 Plaintiffs’ claims that Fannie Mae did not perform needed maintenance disproportionately on  
28 properties in communities of color and that such lack of maintenance harmed those communities

by reducing property values, among other consequences. For example, if more properties are being marketed “as is” in those communities that arguably reinforces Plaintiffs’ theory of the case. So while the Court agrees that marketing separate from maintenance might not be at issue, how a property is marketed can be relevant to the poor maintenance claims. As Fannie Mae does not articulate any burden in producing the three fields as opposed to two fields, Plaintiffs’ motion to compel production of the “Initial Marketing Plan” fields as well as the “as is” and “as repaired” fields discussed above is granted.

3. The third dispute regards Fannie Mae's search terms. The Court declines to grant Plaintiffs' request as it appears to be premised on its too broad view of its claims.

This Order disposes of Docket No. 117.

## IT IS SO ORDERED.

Dated: March 9, 2021

Jacqueline Scott Corley  
JACQUELINE SCOTT CORLEY  
United States Magistrate Judge